

# Bypass-at-a-Glance

Per Welfare & Institutions Code § 361.5(b)<sup>1</sup>, reunification services need not be provided to a parent or guardian when the court finds, by clear and convincing evidence<sup>2</sup>:

WIC § 361.5	Description of bypass grounds	Who	Definitions	Order	Notes / factors / cases
(b)(1) <b>Whereabouts of parent unknown</b>	Whereabouts of parent or guardian is unknown.	Parent or guardian		No services; set for six month review per §366(a).  If reunification services are not ordered pursuant to §361.5(b)(1) & whereabouts of parent become known within six months of out-of-home placement of child, the shall order social worker to provide family reunification services. (§361.5(d))	Finding shall be supported by affidavit or proof that reasonably diligent search has failed to locate parent. Posting or publication of notice not required in search. §361.5(b)(1).
(b)(2) <b>Mental disability</b>	Parent or guardian is suffering from mental disability that is described by in Family Code Division 12, Part 4, Chapter 2, that renders him/her incapable of utilizing services.	Parent or guardian	Family Code §7827(a) defines "mentally disabled" as suffering mental incapacity or disorder that renders parent unable to care for and control child adequately.	Court shall order services unless competent evidence from mental health professionals establishes that, even with the provision of services, parent is unlikely to be capable of adequately caring for child within time limits specified in §361.5(a). (§361.5(c)(1)) <sup>3,4</sup>	Family Code §7827(c) indicates: 1) two experts are required to support a finding; and 2) qualifications of experts. Two experts need not agree.  Under disentitlement doctrine, court may deny mother reunification services under §361.5(b)(2) if she refuses to submit to psychological evaluations required to make determination about whether she is capable of utilizing reunification services. ( <i>In re C.C.</i> (2003) 111 Cal.App.4th 76)
(b)(3) <b>Physical / sexual abuse again</b>	Child or sibling has been previously removed as result of physical or sexual abuse; returned to custody of parent from whom removed; now being removed again due to physical or sexual abuse.	Parent or guardian		Court shall not order services unless clear and convincing evidence that reunification is in the best interest of the child. (§361.5(c)(2)) <sup>3,4</sup>  Failure of parent to respond to previous services, fact that child was abused while parent was under influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. Fact that parent or guardian is no longer living with individual who severely abused child may be considered in deciding that reunification services are likely to be successful, provided that court shall consider any pattern of behavior on part of parent that has exposed child to repeated abuse. (§361.5(c)(4))	Section 361.5(b)(3) provides that a court does not need to offer reunification services to parents in circumstances where a child was removed from their custody for abuse, later returned to parental custody, and then removed again for additional abuse. Even in cases where the initial abuse that led to the first removal was abuse of the child's sibling and not the child himself, the general rule favoring reunification no longer applies at the time of the second removal for additional abuse. ( <i>In re D.F.</i> (2009) 172 Cal.App.4th 538)
(b)(4) <b>Caused death of another child</b>	Parent or guardian has caused the death of another child through abuse or neglect.	Parent or guardian			No requirement that the parent be convicted of causing the death.  Bypass of services was proper where mother's criminal negligence led to the death of her child. ( <i>J.M. v. Superior Court</i> (2012) 205 Cal.App.4th 483)  Reunification services can be denied under §361.5(b)(4) for a man who committed murder prior to becoming a parent, because "parent" refers to the parent's or guardian's status in the current dependency proceeding, and the phrase "the death of another child" means the death of any other child. ( <i>Mardardo F. v. Superior Court</i> (2008) 164 Cal.App.4th 481)

Per Welfare & Institutions Code § 361.5(b)<sup>1</sup>, reunification services need not be provided to a parent or guardian when the court finds, by clear and convincing evidence<sup>2</sup>:

WIC § 361.5	Description of bypass grounds	Who	Definitions	Order	Notes / factors / cases
(b)(5)  <b>Severe physical abuse of child under 5</b>	Child is subject of §300(e) petition [severe physical abuse of child under 5] due to conduct of parent or guardian	Abuse by parent or any person known to parent, if parent knew or reasonably should have known that child was being abused (§300(e))	Per §300(e), " <b>severe physical abuse</b> " means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to §332.	<p>Court shall not order services unless preponderance of evidence based on competent testimony that services are likely to prevent re-abuse or continued neglect OR that failure to try reunification will be detrimental to child because child is closely and positively attached to parent (§361.5(c)(3))<sup>3,4</sup></p> <p>Failure of parent to respond to previous services, fact that child was abused while parent was under influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. Fact that parent or guardian is no longer living with individual who severely abused child may be considered in deciding that reunification services are likely to be successful, provided that court shall consider any pattern of behavior on part of parent that has exposed child to repeated abuse. (§361.5(c)(4))</p>	<p>Order denying reunification services reversed where there was no evidence mother should have known infant was abused. 361.5(b)(5) requires proof that mother knew or should have known infant was being abused in order for the court to deny her services. Here, there was no such evidence. (<i>L.Z. v. Superior Court</i> (2010) 188 Cal.App.4th 1285)</p> <p>Sections 300(e) and 361.5(b)(5), read together, permit denial of services to parents on a showing that a parent or someone known by the parent physically abused the child. Under §361.5(b)(7), the juvenile court may deny reunification services as to a sibling of the child who falls within §361.5(b)(5). (<i>In re Kenneth M.</i> (2004) 123 Cal.App.4th 16)</p> <p>Mother bypassed per §361.5(b)(5) &amp; (6) could not evade the requirements of §361.5(c) merely by waiting a few months and then seeking relief under §388. Order granting reunification services by way of §388 petition is reversed where: 1) juvenile court failed to make requisite findings under §361.5(c), which prohibits services where children detained under §300(e) unless services are likely to prevent reabuse or that failure to reunify will be detrimental to the child; and 2) even if necessary findings had been made, there was a lack of substantial evidence to support findings as there is no evidentiary basis for finding by clear and convincing evidence that reunification would be in the best interests of the child. (<i>In re A.M.</i> (2013) 217 Cal.App.4th 1067)</p>

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4 If court does not order reunification services, it shall determine whether hearing under §366.26 be set in order to determine most appropriate plan for child. (§361.5(f))

Per Welfare & Institutions Code § 361.5(b)<sup>1</sup>, reunification services need not be provided to a parent or guardian when the court finds, by clear and convincing evidence<sup>2</sup>:

WIC § 361.5	Description of bypass grounds	Who	Definitions	Order	Notes / factors / cases
(b)(6) <b>Severe physical harm or sexual abuse</b>	Child is dependent per any section of §300 as result of severe sexual abuse or severe physical harm to child, sibling or half-sibling by parent or guardian; and factual finding that it would not benefit child to pursue reunification services with the offending parent or guardian. (§361.5(b)(6)(A))	Parent or guardian	<p>A finding of <b>severe sexual abuse</b> may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half sibling of the child, or between the child or a sibling or half sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child's, sibling's, or half sibling's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian. (§361.5(b)(6)(B))</p> <p>A finding of the infliction of <b>severe physical harm</b> may be based on, but is not limited to, deliberate and serious injury inflicted to or on child's body or body of sibling or half sibling of child by act or omission of parent or guardian, or of another individual or animal with consent of parent or guardian; deliberate and torturous confinement of child, sibling, or half sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage. (§361.5(b)(6)(C))</p>	<p>Court shall not order services unless clear and convincing evidence that reunification is in the best interest of the child. (§361.5(c)(2))<sup>3,4</sup></p> <p>Failure of parent to respond to previous services, fact that child was abused while parent was under influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. Fact that parent or guardian is no longer living with individual who severely abused child may be considered in deciding that reunification services are likely to be successful, provided that court shall consider any pattern of behavior on part of parent that has exposed child to repeated abuse. (§361.5(c)(4))</p>	<p>Per §361.5(h), to determine if services will benefit child, court shall consider any relevant info, including:</p> <ol style="list-style-type: none"> <li>1) Specific act or omission comprising severe sexual abuse or severe physical harm;</li> <li>2) Circumstances under which abuse/harm was inflicted;</li> <li>3) Severity of emotional trauma suffered by child;</li> <li>4) History of abuse of other children by offending parent/guardian;</li> <li>5) Likelihood that child may be safely returned within 12 months with no continuing supervision;</li> <li>6) Whether or not child desires to be reunified.</li> </ol> <p>Court shall read into record the basis for finding of severe sexual abuse or infliction of severe physical harm and shall also specify factual findings used to determine that provision of reunification services would not benefit child.</p> <p>Court can deny services to parent under §361.5(b)(6) when there is torturous act or omission that would be reasonably understood to cause serious emotional damage. Physical harm to child not required. (<i>Jose O. v. Superior Court</i> (2008) 169 Cal.App.4th 703)</p> <p>Denial of services under §361.5(b)(6) cannot be based on mere negligence, but requires finding that parent either perpetrated abuse, or knew child was being abused by another person. (<i>Tyrone W. v. Superior Court</i> (2007) 151 Cal.App.4th 839)</p> <p>Services can be denied under §361.5(b)(6) to parent who gave actual or implied consent to sexual abuse of child by another person. (<i>Amber K. v. Superior Court</i> (2006) 146 Cal.App.4th 553)</p> <p>Parents' failure to provide medical care constitutes infliction of serious injury by omission under §361.5(b)(6) where broken leg caused pain and disfigurement. (<i>Pablo S. Sr. v. Superior Court</i>, (2002) 98 Cal.App.4th 292)</p>
(b)(7) <b>Parents denied services per (b) (3), (5) or (6)</b>	Parent is not receiving reunification services for sibling or half-sibling pursuant to §361.5(b)(3), (5) or (6).	Parent			<p>Court properly denied services to father in case of two sons, when father was found to have severely sexually abused his daughter. §361.5(i) expressly provides that in determining whether to deny services pursuant to §361.5(b)(7), court shall consider any information it deems relevant, including severe sexual abuse of the sibling. Here, court found that father's sexual contact with daughter constituted severe sexual abuse. (<i>In re A.G.</i> (2012) 207 Cal.App.4th 276)</p>

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Per Welfare & Institutions Code § 361.5(b)<sup>1</sup>, reunification services need not be provided to a parent or guardian when the court finds, by clear and convincing evidence<sup>2</sup>:

WIC § 361.5	Description of bypass grounds	Who	Definitions	Order	Notes / factors / cases
(b)(8) <b>Child conceived as result of sex offense</b>	Child was conceived as result of violation of Penal Code §288 or §288.5, or by act committed outside of state that, if committed in state, would constitute one of those offenses.	Parent	Penal Code §288(a): willfully & lewdly commits lewd or lascivious act, including any of acts constituting other crimes provided for in Part 1, of a child who is under age 14 years, with intent of arousing, appealing to, or gratifying lust, passions, or sexual desires of that person or child  Penal Code §288.5(a) continuous sexual abuse of child: Any person who either resides in same home with minor child or has recurring access to child, who over period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with child under age of 14 years at time of the commission of the offense, as defined in subdivision (b) of §1203.066, or three or more acts of lewd or lascivious conduct, as defined in §288, with child under age of 14 years at the of the commission of offense	Court shall not order services unless clear and convincing evidence that reunification is in the best interest of the child. (§361.5(c)(2)) <sup>3,4</sup>  Failure of parent to respond to previous services, fact that child was abused while parent was under influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful.	Applies only to the parent who committed the offense or act.  <b>b(10)</b> The bypass provision in §361.5(b)(10) applies when the court has previously terminated reunification services for siblings or half siblings; it does not apply when reunification services were previously terminated for the same child. ( <i>J.A. v. Superior Court</i> (2013) 214 Cal.App.4th 279)
(b)(9) <b>Willful abandonment or safe surrender</b>	§300(g) petition; OR Willful abandonment and abandonment constituted serious danger to child; OR Parent or other person having custody voluntarily surrendered child pursuant to "safe surrender" (Health & Safety Code §1255.7)	Parent or guardian, or other person having custody	For purposes of this paragraph, "serious danger" means that without intervention of another person or agency, child would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, "willful abandonment" shall not be construed as actions taken in good faith by parent without intent of placing child in serious danger.	Fact that parent or guardian is no longer living with individual who severely abused child may be considered in deciding that reunification services are likely to be successful, provided that court shall consider any pattern of behavior on part of parent that has exposed child to repeated abuse. (§361.5(c)(4))	A parent cannot be denied services based on prior failure to reunify with a sibling, when the sibling was removed in a state other than California. ( <i>Melissa R. v. Superior Court</i> (2012) 207 Cal.App.4th 816)
(b)(10) <b>Prior termination of reunification services</b>	Court ordered termination of reunification services for sibling or half-sibling because parent or guardian failed to reunify, and same parent or guardian has not subsequently made reasonable effort to treat problems that led to removal of sibling or half-sibling	Parent or guardian			Juvenile court erred when it denied services under 361.5(b)(10). However, parents were not entitled to services because child was not removed from their custody, but removed from grandparents who were legal guardians. ( <i>In re B.L.</i> (2012) 204 Cal.App.4th 1111)
(b)(11) <b>Prior termination of parental rights</b>	Parental rights of parent over sibling or half-sibling have been terminated, and same parent has not subsequently made reasonable effort to treat problems that led to removal of sibling or half-sibling	Parent			Denial of reunification services is proper when based on a parent's failure to treat problems which led to removal of child's siblings, even if prior petition did not allege the same problems as subsequent petition. ( <i>n re Lana S.</i> (2012) 207 Cal.App.4th 94)

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(b)(12) <b>Violent felony</b>	Parent or guardian was convicted of violent felony as described in Penal Code §667.5(c)	Parent or guardian	For the purpose of this section, "violent felony" shall mean any of the following, pursuant to Penal Code §667.5(c): (1) Murder or voluntary manslaughter. (2) Mayhem. (3) Rape per §261(a) (2) or (6) or §262 (a)(1) or (4). (4) Sodomy per §286(c) or (d). (5) Oral copulation: §288a(c) or (d). (6) Lewd or lascivious act per §288. (7) Any felony punishable by death or imprisonment in the state prison for life. (8) Any felony in which defendant inflicts great bodily injury on any person other than an accomplice, with firearm etc. (9) Any robbery. (10) Arson per §451 (a) or (b). (11) Sexual penetration per §289 (a) or (j). (12) Attempted murder. (13) A violation of §12308, 12309, or 12310. (14) Kidnapping. (15) Assault with intent to commit a specified felony, per §220. (16) Continuous sexual abuse of child, per §288.5. (17) Carjacking per §215(a). (18) Rape, spousal rape, or sexual penetration, per §264.1. (19) Extortion, per §518, which would constitute felony violation of §186.22. (20) Threats to victims or witnesses, per §136.1, which would constitute felony violation of §186.22. (21) Any burglary of first degree, per §460(a) where person in residence during commission of burglary. (22) Any violation §12022.53. (23) A violation of §11418(b) or (c).	Court shall not order services unless clear and convincing evidence that reunification is in the best interest of the child. (§361.5(c)(2)) <sup>3,4</sup>  Failure of parent to respond to previous services, fact that child was abused while parent was under influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful.	§361.5(b)(12) does not violate substantive due process rights. §361.5(c) enables a parent to obtain reunification services notwithstanding §361.5(b)(12), where the parent demonstrates reunification is in the child's best interest. ( <i>In re Allison J.</i> (2010) 190 Cal.App.4th 1106)
(b)(13) <b>Chronic use of alcohol or drugs</b>	Parent or guardian has history of extensive, abusive, and chronic use of drugs or alcohol.	Parent or guardian	In addition, parent either (a) has resisted prior court-ordered treatment during three year period immediately prior to filing of petition, or (b) has failed or refused to comply with drug or alcohol treatment described in §358.1 case plan on at least two prior occasions, even though programs were available and accessible.	Fact that parent or guardian is no longer living with individual who severely abused child may be considered in deciding that reunification services are likely to be successful, provided that court shall consider any pattern of behavior on part of parent that has exposed child to repeated abuse. (§361.5(c)(4))	For the purpose of determining whether reunification services may be bypassed under §361.5(b)(13), court-ordered treatment includes treatment ordered as a condition of parole. ( <i>D.B. v. Superior Court</i> (2009) 171 Cal.App.4th 197)
(b)(14) <b>Parent waives FR</b>	Parent or guardian not interested in: receiving services (FM or FR), OR having child returned to or placed in his/her custody and does not want FM or FR.	Parent or guardian	Parent or guardian shall be represented by counsel and shall execute waiver of services form to be adopted by the Judicial Council (JV-195). The court shall advise parent or guardian of any right to services and of possible consequences of a waiver of services, including termination of parental rights and placement of child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived right to services		

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(b)(15) <b>Parent abducted child or sibling</b>	Parent or guardian has abducted child or child's sibling or half-sibling from placement, and: <ul style="list-style-type: none"> <li>• has refused to disclose whereabouts, OR</li> <li>• has refused to return child to placement, OR</li> <li>• has refused to return child to social worker.</li> </ul>	Parent or guardian		Court shall not order services unless clear and convincing evidence that reunification is in the best interest of the child. (§361.5(c)(2)) <sup>3,4</sup>  Failure of parent to respond to previous services, fact that child was abused while parent was under influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that parent's behavior is unlikely to be changed by services are among factors indicating that reunification services are unlikely to be successful. Fact that parent or guardian is no longer living with individual who severely abused child may be considered in deciding that reunification services are likely to be successful, provided that court shall consider any pattern of behavior on part of parent that has exposed child to repeated abuse. (§361.5(c)(4))	No abduction of child for purposes of §351.5(b)(15) bypass provisions where child was lawfully in mother's care when mother moved the child out of state. ( <i>A.A. v. Superior Court</i> (2012) 209 Cal.App.4th 237)
(b)(16) <b>Parent is registered sex offender</b>	Parent or guardian has been required by the court to be registered on a sex offender registry.	Parent or guardian	Parent or guardian has been required by court to be registered on sex offender registry under federal Adam Walsh Child Protection & Safety Act of 2006 (42 U.S.C. Sec.16913(a)), as per §106(b)(2)(B)(xvi)(VI) of Child Abuse Prevention and Treatment Act of 2006 (42 U.S.C. Sec. 5106a(2)(B)(xvi)(VI)).		
(b)(17) <b>Sexual exploitation</b>	Parent or guardian knowingly participated in, or permitted, sexual exploitation of child	Parent or guardian	Sexual exploitation described in Penal Code § 11165.1(c) or (d), or §236.1(c). Shall not include instances where parent demonstrated by preponderance of evidence that he or she was coerced into permitting, or participating in, the sexual exploitation of the child.		
(e)(1) <b>Parent is incarcerated, institutionalized, detained by Homeland Security, or has been deported</b>	If the parent or guardian is incarcerated or institutionalized, or detained by the US Department of Homeland Security, or has been deported to his or her country of origin, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child.	Parent or guardian	To determine detriment, court shall consider age of child, degree of bonding, length of sentence, length and nature of treatment, nature of crime or illness, degree of detriment to child if services are not offered and, for children 10 or older, child's attitude toward implementation of family reunification services, likelihood of parent's discharge from incarceration, institutionalization or detention within reunification time limitations described in subdivision (a), and any other appropriate factors. In determining content of reasonable services, court shall consider particular barriers to incarcerated, institutionalized, detained or deported parent's access to those court-mandated services and ability to maintain contact with child, and shall document this information in child's case plan. Reunification services are subject to applicable time limitations imposed in subdivision (a). Services may include, but shall not be limited to, all of the following: (A) Maintaining contact between parent and child through collect telephone calls. (B) Transportation services, where appropriate. (C) Visitation services, where appropriate. (D) Reasonable services to extended family members or foster parents providing care for child if services are not detrimental to child. Incarcerated or detained parent may be required to attend counseling, parenting classes, or vocational training programs as part of reunification service plan if actual access to these services is provided. Social worker shall document in child's case plan particular barriers to an incarcerated or institutionalized parent's access to those court-mandated services and ability to maintain contact with child. (E) Reasonable efforts to assist parents who have been deported to contact child welfare authorities in their country of origin, to identify any available services that would substantially comply with case plan requirements, to document parents' participation in those services, and to accept reports from local child welfare authorities as to parents' living situation, progress, and participation in services.		Reunification services may be denied to an incarcerated parent under §361.5(e), even if the parent has not been convicted. The Legislature deliberately used different terms, "incarceration," "conviction," and "sentence" in different subdivisions of §361.5. ( <i>Edgar O. v. Superior Court</i> , (2000) 84 Cal.App.4th 13)

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